

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

TRANSLATION

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference

PCT-AB04065

Date of mailing
(day/month/year)

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/JF2004/016557

International filing date (day/month/year)

09.11.2004

Priority date (day/month/year)

12.11.2003

International Patent Classification (IPC) or both national classification and IPC

Applicant

J-OIL MILLS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/IP

Authorized officer

Facsimile No.

Telephone No.

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International application No.

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. IV Lack of unity of invention

1. ☐ In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has:
- ☐ paid additional fees
 - ☐ paid additional fees under protest
 - ☐ not paid additional fees
2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:
- ☐ complied with
 - ☒ not complied with for the following reasons:

What is common between claims 16 and 13 is a vegetable fat composition containing a long-chain highly unsaturated fatty acid. However, this is a publicly-known vegetable fat composition as described in Laid-Open Patent No. 2201-226693, for example, and thus cannot be considered to be a technical feature that makes an advantageous difference over the prior art. Therefore, these two claims do not share special technical features, and these groups of inventions are not so linked as to form a single general inventive concept.

4. Consequently, this opinion has been established in respect of the following parts of the international application:
- ☒ all parts
 - ☐ the parts relating to claims Nos. _____

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International application No.

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
1. Statement		
Novelty (N)	Claims 1-12, 23, 24	YES
	Claims 13-22	NO
Inventive step (IS)	Claims 1-12, 23, 24	YES
	Claims 13-22	NO
Industrial applicability (IA)	Claims 1-24	YES
	Claims	NO

2. Citations and explanations:

'Document 1: Hirofumi Kato, Borage yu no seijo to oyo, Fragrance Journal, 1996, vol. 24, no. 5, pp. 77-81
52369 A (Illinois Tool Woks, Inc.), 19 February, 2002
Document 2: JP 5-304972 A (Union Industrial y Agro-Ganadera, S.A.), 19 November 1993 & EP 484266 A1 & CA 2054409A & ZA 9108443 A
Document 3: JP 2003-306690 U (Noble K.K.), 31 October 2003 (Family: none)
Document 4: JP 11-89513 A (Societe des Produits Nestle S.A.), 6 April 1999 & EP 893064 A1 & AU 9877323 A & KR 99013725 A
& US 6297279 B1 & DE 69718455 E

Claims 13-19 and 22

The inventions of claim 13-19 do not appear to possess novelty based on the fact that the vegetable fat composition of claims 13-19 cannot be distinguished from the borage oil described in document 1 as cited in the ISR.

Similarly, the inventions of claims 13-19 and 22 do not appear to possess novelty based on the fact that the vegetable fat composition described therein cannot be distinguished from the vegetable fat composition described in documents 2-4.

Claims 20 and 21

The inventions of claim 20 and 21 do not appear to involve an inventive step because a person skilled in the art can easily use an arachidonic acid as the long-chain n-6 unsaturated fatty acid based on the descriptions of documents 2 and 4.